O/Entertainment/51

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File No. 18/51

Legal Dept

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Subject:—

Opinion on the Bombay Feeding at Entertainment (Restrictim) Order, 1950.

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O/Entertainment/51

File No. 18/51

Gen. 194 e.

C O N T E N T S.

Legal Department File No. O. Entertainment/51

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The members of the mess as a whole do not constitute a household as defined in the Bombay Feeding at Entertainments (Restriction) Order, 1950. Therefore if they together invite guests at a lunch or dinner held at or in connection with an entertainment, they or any of them cannot be excluded from the limits of 24. But any particular member may for himself or at his own entertainment invite such number of guests as he likes provided the total number of guests and himself is not more than 24. In that case the other members of the mess who are neither hosts nor guests to that particular party cannot be counted.

Id./..... 12/7

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-279, dated the 12th July 1951.

SAR 26-7-56
4 Copies.

In this case the Flying Club of India put up a notice at the Club stating that a special lunch was being provided on 31st December 1950 and the members were asked to book their seats. Accordingly, it appears 23 members booked their seats and invited 14 guests. In all 37 persons took the lunch. The question for consideration is whether the Club authorities or any of the persons who took the lunch contravened the provisions of the Bombay Feeding & Entertainments(Restrictions)Order, 1950. So far as the Club authorities are concerned, it is true that the Club holds a caterer's permit. Clause 3(b) of the Order prevents a caterer from serving or distributing food at his or at some other person's entertainment. In this case it is true that the Club authorities put up a notice for the lunch. But it will be difficult to hold that the lunch was the Club's entertainment. As a caterer the serving of a lunch was one of the ordinary functions of the club and merely because a special lunch at an increased rate was provided, and at which each person was to pay for the food served, it would not be possible to hold that the club authorities contravened clause 3(b)of the Order. The position of the club was not in regard to this matter in any way different from an ordinary hotel.

2 As regards the members of the club; clause 3(a) prevents a person or a body of persons acting in concert from serving or distributing food to more than 24 persons. All the members who took lunch at the Club themselves or with their guests cannot be held to have acted in concert. There is no resolution passed by the members of the club to have a joint lunch on 31st

December 1950. The Secretary's statement made to the Police that it was the desire of certain members to lunch together would not be held as a confession which would be admissible in evidence to prove the fact of concert between the members who took part in the lunch. Each one acted individually and none of them had more than 24 guests. The members themselves cannot be held to have contravened clause 3(a) of the Order.

3. So far as the persons who took lunch including the guests, if no contravention was committed either by the Club authorities or the members under sub-clause(a) or(b)of clause 3 of the Order, such persons would not be liable under clause 5.

4. The view taken by the Dy. Commissioner of Police is correct.

Id./..... 11/7

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. G-277, datedthe 11th July 1951.

SMR 25-7-56
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Statement of the case.

In this case the Secretary of the Bombay Flying Club Ltd. put up the following notice on 27-12-1950 at the Club premises at Juhu Aerodrome.

"A special lunch is being arranged on Sunday the 31st December 1950 at a flat rate of Rs. 3-8-0 each. Members are requested to book their requirements with the undersigned before 5 P.M. on the 29th December 1950"

According to the statement of the Secretary, recorded by the Police, this notice was put up because some of the members of the Club had suggested a special lunch it being New Years's Eve. On 31-12-50, 37 persons took special lunch at the Club premises. These 37 persons consisted of-

21 members of the Club or of the Club staff.

1 guest invited by one of the above members of the club.

1 guest invited by another of the above members of the Club.

14 guests invited together by two member of the Club.

Some of the members had booked their lunches in advance. Some happened to come at the time and took the lunch. All the members paid individually for their lunches and those who had invited guests paid for their guests also. The Club holds a caterer's permit and does serve meals on its premises to members who pay for them.

2 The question for consideration is whether any of the following persons has contravened any of the provisions of the Bombay Feeding at Entertainments(Restriction) Order, 1950-

(1) The Club,

(2) The Secretary,

(3) The persons who partook of the lunch.

3. As regards the Club the relavant provision is clause 3(b)of the Order which reads as follows:-

"3(b) No caterer for the benefit of himself or at the instance of any person inconnection with one or more of his own or such person's entertainments, shall on any one day, either himself or through an agent or agents or through any other caterer-

(i) serve, distribute or provide for consumption or accept for service or distribution for consumption, any prohibited article to more than twenty-four persons; or

(ii) Prepare or cause to be prepared food consisting of any prohibited article for consumption by such number of persons at or in connection with such entertainment or entertainments.

Explanation.- For the purpose of this clause, twenty-four persons shall include person or persons so serving, distributing or providing or accepting or contributing for such service or distribution but shall not include the members of the household (including himself) of the person by whom or on whose behalf, prohibited articles are so served, distributed, provided, accepted or contributed.

Provided that when the service, distribution or providing, accepting or contributing or any such article is made or done on behalf of more than one person not belonging to the same household, the members of the household(including themselves)of such persons shall not be excluded for the purpose of counting twenty-four persons".

What is required, is that the preparing or serving or distributing of food should be in connection with one or more entertainments. The question is whether having regard to the fact that it was a New Years Eve, there was special lunch, and the said lunch was according to the notice arranged and the said arrangement took place according to the statement of the Secretary to the police(hich would not be admissible in evidence)at the suggestion of some of the members, it can be said that the preparation or serving of food by the caterer was "for the benefit of himself or at the instance of any person in connection with one or more of his own or such person's entertainments". In this respect there is no resolution of the Club or of the Managing Committee of the Club sanctioning the holding of the lunch. The notice seems to have been put up by the Secretary on his own authority, It would, therefore, seem that all the members of the Club or the members of the Managing Committee cannot be held liable.

4 As regards the Secretary the relevant provision is clause 3(a) of the Order which reads as follows:-

> "3(a) No person or body of persons acting in concert either jointly or severally, other than a caterer or caterers, at or in connection with one or more entertainments, shall on any one day, either himself or themselves or through an agent or agents or through a caterer or caterers-
>
> (i) serve, distribute or provide for consumption or accept or contribute for service or distribution for consumption any prohibited article to more than twenty-four persons; or
>
> (ii) prepare or cause to be prepared food consisting of any prohibited article for consumption by such number of persons."

What is required is that the preparing or serving or distributing shall be "at or in connection with one or more entertainments". The facts bearing on that question are the same as pointed out in the preceding para. In regard to the Secretary the question for consideration will be whether in arranging the lunch and putting up the notice, the Secretary cannot be held liable as serving, distributing or providing food through his agents or a caterer.

5 As regards the persons who partook of the lunch the relevant clauses are 3(a) and 5. Clause 3(a) has already been reproduced. Clause 5 reads as follows:-

> "5. No person shall accept or consume any prohibited article when served, distributed or provided for consumption by any person or body of persons in concert either jointly or severally at or in connection with one or more entertainments in contravention of the provisions of clause 3".

Now as the members paid individually for their lunch and for their guests, and as in no case did the guests exceed along with their respective hosts the number 24, clause 3(a) would not apply unless it can be said that all the members of the Club who took part in the lunch were" a body of persons acting in concert either jointly or severally" As for clause 5 it would apply only if clause 3 has been contravened.

6 The Advocate General is kindly requested to give

his opinion at an early date. A copy of R.L.A.'s opinion on the point is appended hereto for the information of the Advocate General.

Id./..... 19/7

Remembrancer of Legal Affairs.

U.B. to Advocate General No. 11470, dated the 20th July 1951.

SMR 25-7-56
4 Copies.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 7th August 1951.

With Reference to Unofficial Reference to C.S.D.----- No. G-277, dated the 11th July 1951, I may state that in this case the Secretary of the Bombay Flying Club Limited put up a notice stating that a special lunch was being arranged on 31st December 1950 and the members were requested to book their requirements. Accordingly in all about 37 persons took their lunch on 31st December 1950 amongst whom 21 persons were members. As regards the remaining 16 people 14 were invited by 2 members together and the remaining two were invited by 2 other members each member having one guest. As regards the members some of them had already booked their lunches in advance and the remaining happened to come there at the time of the lunch. The question for consideration therefore is whether the Club Authorities or the Secretary or any of the persons who took their lunch there contravened any of the provisions of the Bombay Feeding(at)Entertainment (Restrictions)Order of 1950.

As regards the Club Authorities the Club holds a caterer's permit and the relevant Clauses therefore for consideration is Clause 3(b)of the Order. Clause 3(b) prohibits a caterer from serving or distributing food for consumption at his or some other person's entertainment. In view of the fact that each member who partook of the lunch was to pay for his lunch, it is difficult to say that this was an entertainment by the caterer or by any other member. It is the normal function of a Club as caterer to serve lunch for its members when so required and merely because a flat increased rate was provided for the lunch it is difficult to say that the Club has contravened any of the provisions of Clause 3(b)of

of the Order. Such a notice may be regarded as somewhat similar to advertisement given by proprietors of hotels when they invite the public to reserve accommodation on dance day at flat rates. I think Club Authorities have not contravened Clause 3(b)of the Order.

As regards the Secretary the relevant Clause for consideration is Clause 3(c)of the Order. This Clause also requires that the service of distribution of food should be "on or in connection with one or more entertainments". The Secretary has not invited all the persons who partook of the lunch as his guests. Whoever desired to have lunch was to pay for his own lunch. The mere fact that in the notice it was stated that "a special lunch is being arranged" will not make him liable under Clause 3(a). The fact that in his statement before the Police he stated that this notice was put up at the suggestion of some of the members cannot be relied upon as such a statement is clearly inadmissible in evidence.

As regards the persons who partook of the lunch the relevant clause for consideration is Clause 5 read with Clause 3(a)of the Order. In this case there is no resolution of the members authorising such lunch to be arranged and therefore it cannot be stated that they have acted in concert either jointly or severally. Further the ingredient "at or in connection with one or more entertainments" should also be present. From what is stated above this ingredient is not present and as neither Clause 3(a)or 3(b)is violated the question of contravening Clause 5 will not arise.

The opinion given by the Remembrancer of Legal Affairs is in my view correct.

Sd./.....

ADVOCATE GENERAL OF BOMBAY.

SKP 26-7-56
4 Copies.

The view taken by the C.S.D. appears to be correct. A similar question was considered by the R.L.A. with reference to a similar order which was in force in the year 1946 and it was held by the R.L.A. that the word "functions" in that order is to be read eiusdem generis with the words "parties, entertainments". It was therefore held in that opinion that an exhibition sale usually held at the Sir Cowasjee Jehangir Hall is not a party, entertainment or function within the meaning of that order and consequently the sale of eatables at such exhibition involved no breach of that order. The said opinion would equally apply to the facts of this case and therefore sale by the stall holders at the exhibition held in connection with the international supper organised by the Y.W.C.A. cannot be said to be in connection with entertainment.

Id./..... 1/10

Remembrancer of Legal Affairs.

Secy C.S.D.

SMR 26-7-56
4 Copies.

Sub-section(2) of section 7 of the Essential Supplies (Temporary Powers) Act, 1946 as amended by Act LII of 1950 provides that if any person contravenes any order under section 3 relating to foodstuffs he shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine unless for reasons to be recorded the court is of the opinion that a sentence of fine only will meet the ends of justice. In this case the Magistrate has given reason for a lenient sentence but they are not convincing. Even though the food was prepared for 40 or 50 persons that number was very much above 24 which was the permissible number and hence this is not a valid reason. The second reason is about the nature of preparation. It is true that there was no special preparation such as Laddus or some common Indian sweet dish but the food consisted of 260 lbs. of cooked rice. Rice is a rationed article very much in short supply in this state and therefore the offence is more serious than for preparing Laddus of gram flour and sugar and ghee. The sentence is inadequate. In view of the B.L.A.'s opinio regarding supersession of the Enhancement of penalties Act in so far as it relates to the offences under the Essential Supplies (Temporary Powers) Act, 1946, I have not considered the quantum of punishment from that aspect. In a case from Ahmedabad under the same Order in which we moved the High Court for enhancement the High Court had enhanced the sentence of fine of the main organize from Rs. 250/- to 350/- after taking into consideration the equities of the case. This is therefore a fit case for moving the High Court for enhancement.

However there is flaw in the prosecution which might prove fatal to the case and in our anxiety to get the sentence enhanced there is a likelihood of the Accused being acquitted. It is this The Accused are prosecuted for breach of Government Order, Civil Supplies Department, No. 390(a)FAQ, dated the 28th May 1949, which order was repealed by clause 8 of the Bombay Feeding at Entertainment(Restriction)Order, 1950, issued on the 7th August 1950. The offence in this case was committed on the 16th Februar

1951 and the prosecution ought to have been instituted for treac of the latter order. Besides under the latter order the members of the household are nor included in the number 24 and therefore as it was the Accused's case that the food was prepared for the members of his household and servants, he could have got an acquittal in the lower court if he was prosecuted under the correct order and if he could show that there were so many persons in his household. For these reasons, I think we will have to decide against moving the High Court for enhancement.

Id./.....

Additional Secrtary to Government.

U.R. to C.S.D., No. G-577, dated the 26th November 1951.

SMR 26-7-56
4 Copies.

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Clause 3 of the Bombay Food(Restrictions on Service of Meals by Catering Establishments)Order, 1947, provides that no catering establishment shall supply for consumption and no person shall obtain or consume at or in connection with a catering establishment at or for the purpose of any single meal ore than two courses, whether served successively in European style or together in Indian style. In this case the vegatarian type of meal was served in the Indian style together, containing one substantial dish and one subsidiary dish. After this meal is over at the same sitting if one more subsidiary dish is provided in the form of a sweet dish it would be in breach of the order as for the purposes of a single meal in all 1 substantial and 2 subsidiary dishes are served. The word 'whether served successively in European style or together in Indian style' though not happily worded do not really introduce any difficulty of interpretation. In this case both the styles are adopted. The silver thali contains 1 substantial and 1 subsidiary dish served together in Indian style and the 2nd subsidiary dish is served successively in European style.

Id./..... 8/2

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G- 623, dated the 10th December 1951.

SMR 26-7-56
4 Copies.